

STATE OF VERMONT  
HUMAN SERVICES BOARD

In re	)	Fair Hearing No. 16,146
	)	
Appeal of	)	

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying his request for an increase in Food Stamps retroactive to September, 1998. The issue is whether the petitioner should have been found eligible for a nominal amount of fuel assistance for the 1998-99 heating season, and thus eligible for an increase in his Food Stamps during that time.

FINDINGS OF FACT

1. The petitioner lives alone in a one-bedroom apartment that is subsidized under public housing. His sole income is from SSI.
2. The petitioner pays \$157 a month rent. The rest of his rent obligation is subsidized. Heat and utilities are included in the petitioner's rent.
3. The petitioner represents that in September, 1998, he inquired of his Food Stamp worker whether he would be eligible for fuel assistance. He maintains that his worker told him he

would not because he lived in subsidized housing with his heat and utility costs included in his rent. Based on this information the petitioner did not file an application for fuel assistance at that time.

4. The petitioner did file an application for fuel assistance for the 1999-00 fuel season and was found eligible for a nominal payment. However, this eligibility for fuel assistance also resulted in an increase in his allowable fuel and utility allowance under the Food Stamp program, which in turn resulted in an increase in his monthly Food Stamp allotment.

5. When he received notice of the increase in his Food Stamps the petitioner requested that the increase be made retroactive to September, 1998. The petitioner maintains that he should have been told he was eligible for fuel assistance in September, 1998, and should have received an increase in his Food Stamps effective at that time.

6. The petitioner does not allege any basis for eligibility for fuel assistance in September, 1998, other than the fact that his circumstances did not change and his belief that, if he is eligible this year, he should have been eligible last year.

ORDER

The Department's decision is affirmed.

REASONS

In 1995, the Vermont legislature adopted the Home Heating Fuel Assistance Act, which, at that time, prohibited households that had heating costs included in their rent from receiving fuel assistance. 33 V.S.A. § 2604(c)(1)(A).

Effective July 1, 1996, the above section was amended to allow households with heat included in their rent to receive a "nominal" fuel benefit of \$10. The purpose of this amendment is believed to have been to allow those households to take advantage of an increase in allowable fuel and utility costs under tables used by the Food Stamp program that were based on eligibility for fuel assistance.

However, that same statute contains a provision that "deems" residents of subsidized public housing units "to have incurred no annual home heating fuel costs, except to the extent required by federal law or regulation . . ." The statute goes on to exempt from this provision recipients of public assistance who live in subsidized housing but who actually pay out-of-pocket expenses for heating costs. However, residents of public housing units, like the petitioner, whose landlord provides heat

and utilities, are not exempted. Id. § 2604(c)(2). This provision has remained unchanged.

Thus, under the statute, residents of public housing units with heat included in their rent were not eligible to receive a nominal \$10 fuel assistance benefit. This was reflected in regulations adopted by the Department in November, 1997. Section 2901.3 of those regulations specifically "excluded from eligibility . . . residents of subsidized housing for whom heat is provided in the rent and who do not receive, either directly, or indirectly as a reduction of their rent obligation, any utility allowances that include energy costs."

The above regulation was in effect in September, 1998, when the petitioner inquired of his worker whether he was eligible for fuel assistance. Thus, it is clear that if the petitioner had applied for fuel assistance at that time, he would not have been found eligible. Putting aside the question of whether the petitioner should have been advised to actually file a written application for benefits, the advice he received from his worker at that time was correct under the regulations then in effect.

Effective with the 1999-00 heating season, the Department amended, without comment, the portion of its regulations that exempted from eligibility for fuel assistance residents of subsidized housing units with fuel and utilities included in

their rent. Under § 2901.2(3)(e), as amended, the regulations now provide that all residents of subsidized housing (not just those with out-of-pocket fuel costs) are eligible for a nominal amount of fuel assistance—thus triggering their eligibility for an increase in Food Stamps. There is no question in this case that the petitioner received the full benefit of this change in the regulations effective with this year's heating season.

However, the petitioner has presented no legal argument that this recent change in the regulations can be applied retroactively to now find him eligible for fuel assistance for the 1998-99 heating season. Inasmuch as it has not been shown that the Department's decision in this case is not in accord with the regulations that were in effect at that time, that decision must be affirmed. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 17.

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